

Remarks

Claims 1, 4-10, 13, 15, 19-22, and 25-29 are pending in the application and are presented for the Examiner's review and consideration. Claims 20, 22, and 25-29 have been amended and claim 24 has been cancelled. Applicant believes the claim amendments, cancellation, and accompanying remarks herein serve to clarify the present invention and are independent of patentability. No new matter has been added.

Claim Objection

Claim 22 was objected to because of informalities. Applicant has amended claim 22 in accordance with the Examiner's suggestion.

In light of the foregoing, Applicant requests reconsideration and withdrawal of the claim objection.

Allowable Subject Matter

Claim 20-22 and 25-26 were objected to a being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Applicant has rewritten claims 20 and 25 in independent form as required by the Examiner.

Accordingly, Applicant submits that claims 20 and 25 are in condition for allowance. As claims 22 and 26 depend from claims 20 and 25, Applicant submits that these claims are also in condition for allowance at least for the same reasons.

35 U.S.C. §103 Rejections

Claims 1, 8, 9, 13, 15, 19, 24, 27, and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,008,433 to Stone ("Stone") in view of U.S. Patent No. 5,609,635 to Michelson ("Michelson") and U.S. Patent No. 4,298,993 to Kovaleva et al. ("Kovaleva"). Claims 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable over Stone in view of Michelson and Kovaleva, and further in view of U.S. Patent No. 4,394,370 to

Jefferies ("Jefferies"). Claim 10 and 28 was rejected under 35 U.S.C. §103(a) as being unpatentable over Stone in view of Michelson and Kovaleva, and further in view of U.S. Patent No. 5,669,909 to Zdeblick *et al.* ("Zdeblick"). In response, Applicant respectfully submits that these rejections should be withdrawn.

Initially, Applicant notes that claim 24 has been cancelled rendering the rejection of this claim moot. Furthermore, claims 27-29 have been amended to depend from allowable claim 25. Accordingly, Applicant submits that these dependent claims are allowable at least for the same reasons.

Stone is asserted as disclosing the claimed invention except for the device being coated with a bone growth promoting protein, and a first channel extending through the first major surface and side surface, and a screw angularly disposed in the first channel. Kovaleva was asserted as disclosing an implantable device including a first channel extending through the first major side surface, and a screw angularly disposed in the first channel (ref. # 11/12) in order to fix the implant to the bone, and the screw hole can also be used with a special holder (col. 3, line 30).

Referring to FIG 1 of Kovaleva, the slots 8 in the wedge 3 are aligned with the screw holes 12 in the crescent shaped base 6. As shown in FIGS. 2 and 3, the screw holes 12 do not pass through the teeth 10 of the wedge 3. FIG. 2 is section II of FIG. 1, and it does not show the screw hole 12 passing through either the convex 4 or concave 5 surfaces of the wedge. FIG. 3 is section III of FIG. 1, which shows the screw hole 12 only passes through the crescent shaped base 6, aligned with the slots 8 in the wedge 3.

As such, Kovaleva fails to disclose a screw hole extending through either the convex 4 or concave 5 surfaces and a side surface of the implant.

Furthermore, the screw holes 12 do not pass through the crescent shape base 6 at an angle. As shown in FIG. 2, the screw holes are orthogonal to the front and back surface of the crescent shaped wedge 6. As such, the screw 11 of Kovaleva cannot be disposed in the screw hole such that the screw angularly extends at an acute angle through the front surface of the crescent shaped base 6 through either the convex 4 or concave 5 surfaces.

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Application No.: 10/755,996
Examiner: M. Hoffman


In light of the foregoing, Applicant submits that claim 1 is patentable over the cited prior art. As claims 1, 4-10, 13, 15, 19 depend from claim 1, including all of the recitations thereof, Applicant submits that these claims are patentable at least for the same reasons.

Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed due. However, please charge any fees (or credit any overpayment of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 780-A02-021-5).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. D. Bianco', with a stylized flourish at the end.

Paul D. Bianco, Reg. # 43,500

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